

## DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02 (2014 Repl. & 2015 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 42 (Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This Emergency and Proposed rulemaking, amending Section 4202 (Written Individualized Service Plan Required), Section 4208 (Reimbursement Rates: Case Management Services), and Section 4217 (Program Services: Case Management Services), implements parts of the amendment to the Home and Community-Based Services Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD Waiver), approved by the Centers for Medicare and Medicaid Services (CMS) to be effective on October 20, 2015, and updates previously published final rules governing service plans and case management under the EPD Waiver.

This rulemaking aligns the EPD Waiver with the person-centered planning requirements CMS finalized in 2014, which are codified at 42 C.F.R. § 441.301. Person-centered planning is a process designed to produce a person-centered service plan (PCSP) reflective of the beneficiary's goals and preferences. At minimum, the goals and preferences should relate to community participation, employment, income, savings, and education. Person-centered planning is directed by the beneficiary, and the process may include the involvement of a representative and/or others who the beneficiary has chosen to contribute.

This rulemaking also updates the goal and scope of case management to include transitional case management, in accordance with the 2015 EPD Waiver Amendment. Transitional case management incorporates the enhanced level of coordination needed to reintegrate a beneficiary into home and community based settings following discharge from the hospital or a nursing facility. Finally, this rulemaking implements per member per month reimbursement for case management, also in accordance with the 2015 EPD Waiver Amendment.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of EPD waiver beneficiaries. The EPD Waiver provides access to health care to some of the District's most vulnerable citizens. Promulgating rules to implement person-centered planning, while refining and expanding the scope of case management, is necessary to ensure timely access to the services best suited to meet their unique needs. Further, expanding the scope of case management to address transition following hospital or nursing facility discharge helps facilitate smooth reentry into home and community-based settings at a time when a beneficiary's health is at an enhanced level of fragility. To preserve beneficiaries' health, safety, and welfare, and to

avoid any lapse in access to these critical components of case management, these rules must be published on an emergency basis.

The emergency rulemaking was adopted on May 16, 2016 and became effective for services rendered on or after that date. The emergency rules shall remain in effect for one hundred and twenty (120) days, or until September 13, 2016, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

**Chapter 42, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 4202, WRITTEN INDIVIDUALIZED SERVICE PLAN REQUIRED, is amended to read as follows:**

**4202 WRITTEN PERSON-CENTERED SERVICE PLAN (PCSP) REQUIRED**

4202.1 Home and community-based services under the District’s Waiver for Persons who are Elderly and Individuals with Physical Disabilities (EPD) Waiver shall be provided to eligible beneficiaries pursuant to a written Person-Centered Service Plan (PCSP) developed for each individual.

4202.2 The PCSP shall be developed by the Case Manager in full consideration of the beneficiary’s needs, preferences, strengths, and goals, which are key hallmarks of person-centered planning as defined in Subsection 4217. A PCSP shall be subject to the approval of DHCF, or its designee.

4202.3 A PCSP shall be updated and revised at least annually or whenever a change in a beneficiary’s health needs warrants updates to the plan.

4202.4 Except in the circumstances outlined in Subsection 4202.7, a PCSP shall be required for the initiation and provision of any EPD Waiver service and shall be reviewed by the Case Manager at least quarterly.

4202.5 A PCSP shall, at a minimum, address and/or document the following:

(a) The beneficiary’s, strengths, positive attributes, and preferences for plan development at the beginning of the plan including:

(1) Consideration of the beneficiary’s significant milestones, and important people in the beneficiary’s life; and

(2) The beneficiary’s preferences in order to tailor the plan to reflect

any unique cultural/spiritual needs or be developed in a language or literacy level that the beneficiary and/or representative can understand;

- (b) The beneficiary's goals, including:
  - (1) Consideration of the beneficiary's current employment, education, and community participation along with aspirations for changing employment, continuing education, and increasing level of community participation; and
  - (2) How the goals tie to the amount, duration, and scope of services that will be provided;
- (c) Other contributors selected by the beneficiary and invited to engage in planning and monitoring of the PCSP;
- (d) End of life plan, as appropriate;
- (e) Medicaid and non-Medicaid services and supports preferred by the beneficiary, including supports from family, friends, faith-based entities, recreation centers, or other community resources;
- (f) The specific individuals, health care providers, and/or other entities currently providing services and supports;
- (g) Potential risks faced by the beneficiary and a risk-mitigation plan to be addressed by the beneficiary and his/her interdisciplinary team;
- (h) Approaches to be taken to prevent duplicative, unnecessary, or inappropriate services;
- (i) Assurances regarding the health and safety of the beneficiary, and if restrictions on his or her physical environment are necessary, descriptions and/or inclusion of the following:
  - (1) Explicit safety need(s) with explanation of related condition(s);
  - (2) Positive interventions used in the past to address the same or similar risk/safety need(s) and assurances that the restriction will not cause harm to the beneficiary;
  - (3) Necessary revisions to the PCSP to address risk(s)/safety need(s), including the time needed to evaluate effectiveness of the restriction, results of routine data collection to measure effectiveness, and continuing need for the restriction; and

- (4) Beneficiary's and/or representative's understanding and consent to proposed modification(s); and
  - (j) Components of self-direction (if the beneficiary has chosen self-directed delivery under the *Services My Way* program, set forth in Chapter 101 of Title 29 DCMR.
- 4202.6 Upon completion of development of the PCSP, the Case Manager shall ensure the following:
  - (a) The PCSP receives final approval and signature from all those who participated in its planning and development, including the Case Manager, beneficiary, and/or beneficiary's representative; and
  - (b) All contributors and others who were included in PCSP development receive a copy of the completed plan or any specific component of the plan, as determined by the beneficiary.
- 4202.7 A beneficiary may access waiver services in the absence of a Department of Health Care Finance-approved PCSP under the following circumstances:
  - (a) DHCF determines a delay in the receipt of services would put the beneficiary's health and safety at risk; or
  - (b) DHCF determines, in accordance with Subsection 4217.8(d), services are needed to effectuate a timely discharge from a hospital or nursing facility.
- 4202.8 If waiver services are provided in accordance with Subsection 4202.7, a PCSP shall be completed within thirty (30) days of the date that services were initiated.

**Section 4208, REIMBURSEMENT RATES: CASE MANAGEMENT SERVICES, is amended to read as follows:**

- 4208 REIMBURSEMENT RATES: CASE MANAGEMENT SERVICES**
- 4208.1 Case management services shall be reimbursable on a per member per month (PMPM) basis.
  - 4208.2 The PMPM reimbursement rate during Waiver Year 5 shall be two hundred forty-five dollars and ninety-six cents (\$245.96), contingent on performance of the monthly and ongoing care coordination activities outlined in Section 4217.
  - 4208.3 In order for a case management agency to receive reimbursement for case management services, each Case Manager must perform case management duties either on a full-time or on a part-time basis. At any point in time, no more than forty-five (45) beneficiaries shall be assigned to each Case Manager.

4208.4 The case management agency shall ensure case management services are available during regular business hours and shall be on call during weekends and evenings in case of emergency.

4208.5 Reimbursement for transitional case management services provided during a hospital or nursing facility (*i.e.*, institutional) stay shall not exceed one hundred twenty (120) days. Reimbursement shall be contingent on the Case Manager’s performance of activities during the institutional stay that facilitate transition to the community, consistent with the transitional case management standards set forth in Subsection 4217.8.

4208.6 Reimbursement for transitional case management services shall be made only after the beneficiary returns to the home or community setting and not during the beneficiary’s institutional stay.

**Section 4217, PROGRAM SERVICES: CASE MANAGEMENT SERVICES, is amended to read as follows:**

**4217 PROGRAM SERVICES: CASE MANAGEMENT**

4217.1 The goal of case management shall be to ensure EPD Waiver beneficiaries have access to the services and supports needed to live in the most integrated setting including:

- (a) EPD Waiver Services,
- (b) Non-waiver Medicaid funded services under the Medicaid State Plan; and
- (c) Other public, and private services including medical, social, and/or educational services and supports.

4217.2 Case management shall consist of the following:

- (a) Initial evaluation of the beneficiary’s current and historical medical, social, and functional status to determine levels of service needs;
- (b) Person-centered process for service planning (“person-centered planning”), including development and maintenance of the Person-Centered Service Plan (PCSP) in accordance with Section 4202;
- (c) Monthly and/or ongoing care coordination activities, in accordance with Subsection 4217.7 and transitional case management services set forth in Subsection 4217.8; and
- (d) Annual reassessment activities, in accordance with Subsection 4217.11.

- 4217.3 Consistent with Subsection 4217.2, each Case Manager shall conduct an in-person evaluation of the beneficiary within forty-eight (48) hours of receiving notice of his or her enrollment in the EPD Waiver.
- 4217.4 The Case Manager shall complete the evaluation, develop the PCSP, and submit the PCSP to DHCF, or its designee, within ten (10) business days of conducting the evaluation.
- 4217.5 The Case Manager shall use a person-centered planning process to develop the PCSP, described in Section 4202, with consideration of the following:
- (a) The beneficiary's personal preferences in developing goals to meet the beneficiary's needs;
  - (b) Convenience of time and location for the beneficiary and any other individuals included in the planning, including potential in-person discussions with all parties and representatives of the beneficiary's interdisciplinary team;
  - (c) Incorporating feedback from the beneficiary's interdisciplinary team and other key individuals who cannot attend in-person discussions where the beneficiary is present;
  - (d) Ensuring information aligns to the beneficiary's acknowledged cultural preferences and communicated in a manner that ensures the beneficiary and/or any representative(s) understand the information;
  - (e) Ensuring access to effective, understandable, and respectful services in accordance with the U.S. Department of Health and Human Services' National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care, <http://www.minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>, and providing auxiliary aids and services, if necessary;
  - (f) Providing interpreters and appropriate materials for those with low literacy or Limited English Proficiency (LEP) to ensure meaningful access for beneficiaries and/or their representatives;
  - (g) Incorporating a strengths-based approach which identifies the beneficiary's positive attributes, and assesses strengths, preferences, and needs;
  - (h) Exploration of housing and employment in integrated settings, where planning is consistent with the goals and preferences of the beneficiary; and

- (i) Ensuring that a beneficiary under guardianship, other legal assignment, or who is being considered as a candidate for such an arrangement, has the opportunity to address concerns related to the PCSP development process.

4217.6 Except for services approved to be delivered sooner, DHCF, or its designee, shall prior authorize the services recommended in the PCSP within seven (7) business days of its receipt.

4217.7 Following approval of services by DHCF, or its designee, the Case Manager shall follow-up with the selected service providers within five (5) working days to ensure services are in place at the quantity and quality that is sufficient to meet the beneficiary's needs, unless services are needed earlier and not receiving them would place the beneficiary's health in jeopardy.

4217.8 In order for case management services to be reimbursable, a Case Manager shall perform the following ongoing and/or monthly care coordination activities:

- (a) Direct observation of the beneficiary, including the evaluation described in Subsection 4217.3;
- (b) Follow-up to ensure DHCF, or its designee, timely uploads the beneficiary's level of care determinations into DHCF's electronic management system;
- (c) PCSP development and monitoring in accordance with Section 4202 and Subsection 4217.4;
- (d) Assist the beneficiary to select eligible EPD Waiver providers;
- (e) Coordinate the beneficiary's waiver services to ensure safe, timely, and cost effective delivery;
- (f) Provide information, assistance, and referrals to the beneficiary , where appropriate, related to public benefits and community resources, including other Medicaid services, Medicare, SSI, transit, housing, legal assistance, and energy assistance;
- (g) Support for the beneficiary and family as needed through additional visits, telephone calls, as well as identifying, addressing and resolving problems;
- (h) Monitor performance of supplies and equipment and refer malfunction(s) to appropriate providers;
- (i) Maintain records related to EPD Waiver services a beneficiary receives and upload all information into DHCF's electronic case management system;

- (j) Ensure all information uploaded into DHCF's electronic management system is legible, including monthly assessment/status updates and telephone contacts;
- (k) Assess appropriateness of beneficiary's continued participation in the waiver;
- (l) Provide information to the beneficiary, authorized representative(s), family members, and/or legal guardian(s) about the beneficiary's rights, Waiver provider agency procedures for protecting confidentiality, and other matters relevant to the beneficiary's decision to accept services;
- (m) Identify and resolve problems as they occur;
- (n) Acknowledge and respond to beneficiary inquiries within twenty-four (24) hours of receipt, unless a quicker response is needed to address emergencies;
- (o) Develop and implement a utilization review plan to achieve appropriate service delivery, ensure non-duplication of services, and evaluate the appropriateness, efficiency, adequacy, scope, and coordination of services;
- (p) Conduct at least monthly, or more frequently as needed, in-person monitoring visits in the beneficiary's home;
- (q) Supplement in-person monitoring visits described in Paragraph 4217.7(p) with ongoing telephone contact, as required by the individual needs of the beneficiary;
- (r) Respond to requests received during monitoring activity within forty-eight (48) hours, making necessary updates to the PCSP within seven (7) days of monitoring activity or the beneficiary and/or representative's request to update the PCSP, and ensure the process and all updates comport with Section 4202, including in-person requirements;
- (s) Ensure that the updated PCSP is conducted in-person with the beneficiary, the interdisciplinary team, and others chosen by the person and other requirements of the PCSP planning and development process described in this section;
- (t) Review the implementation of the PCSP at least quarterly, and as needed, in accordance with Subsection 4217.12;
- (u) Promptly communicate any major updates, issues, or problems to DHCF, or its designee;

- (v) Conduct all other activities related to the coordination of EPD Waiver services, including ensuring that services are utilized and are maintaining the beneficiary in the community;
- (w) Provide transitional case management services for a period not to exceed one hundred twenty (120) days during an institutional stay in order to facilitate the beneficiary's transition back to the community, in accordance Subsection 4217.8; and
- (x) Perform other service-specific responsibilities and annual reassessment activities described in Subsections 4217.9 and 4217.13.

4217.9 In order for transitional case management services to be reimbursable by Medicaid, a Case Manager shall perform the following activities:

- (a) Maintain contact with the beneficiary and/or representative during the institutional stay;
- (b) Ensure the beneficiary stays connected to community resources (*e.g.*, housing) during the institutional stay and provide assistance to connect to new or reconnect to existing community resources upon discharge;
- (c) Participate in-person in the discharge planning meetings at the provider site; and
- (d) Secure prior authorization(s) for service(s) to ensure they are in place on the first day of the beneficiary's discharge.

4217.10 In addition to the duties described under Subsections 4217.7 and 4217.8, a Case Manager shall perform the following service-specific care coordination responsibilities, if applicable:

- (a) Ensure occupational or physical therapy services are provided within the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) are fully utilized and waiver services neither replace nor duplicate EPSDT services for a beneficiary ages eighteen (18) through twenty-one (21);
- (b) Examine existing responsibilities of the landlord or homeowner pursuant to the lease agreement (or other applicable residential contracts, laws, and regulations) prior to ordering chore aide services through the PCSP if the beneficiary needs chore aide services and resides in a rental property or a residential facility (*e.g.*, assisted living); and

- (c) Assist the beneficiary with home adaptation assessments, evaluations, or bids in accordance with this Chapter if the beneficiary requires EAA services.

4217.11 In accordance with Chapter 101 of Title 29 DCMR, for the participant directed services program, *Services My Way*, Case Managers shall complete a standard training course on that program conducted by DHCF and participate in all required, ongoing training. Case Managers shall also perform activities related to *Services My Way* as follows:

- (a) Provide waiver applicants/beneficiaries with information about *Services My Way* as follows: at the time an EPD Waiver beneficiary is initially evaluated;; when a beneficiary is reassessed for continued EPD Waiver eligibility;; when the PCSP is updated; and at any other time upon request of the beneficiary or authorized representative;
- (b) Assist applicants/beneficiaries who want to enroll in *Services My Way* by overseeing the beneficiary's completion of enrollment forms and incorporating program goals into the initial PCSP or a revision of an existing PCSP;
- (c) Submit all *Services My Way* forms to the designated DHCF program coordinator;
- (d) Communicate with support brokers to address health and safety concerns identified for *Services My Way* participants; and
- (e) Facilitate transition from *Services My Way* to agency-based personal care aide services when a beneficiary is voluntarily or involuntarily terminated from the program.

4217.12 Case Managers shall also perform any other duties specified under the individual program services sections of this chapter.

4217.13 When conducting PCSP quarterly reviews, the Case Manager shall perform the following activities:

- (a) Review and update risk factors;
- (b) Review stated goals, identified outcomes, services, and supports to ensure the beneficiary is receiving appropriate services for his or her needs;
- (c) Review service utilization;
- (d) Communicate with other providers regarding the beneficiary's goals and progress;

- (e) Identify and resolve problems;
- (f) Provide referrals or linkages to community resources;
- (g) Revise the PCSP, if needed, to reflect changes in needs, goals, and services; and
- (h) Document results of PCSP quarterly reviews in DHCF's electronic case management system, including a summary of the status of the beneficiary's receipt of services and supports.

4217.14 The Case Manager shall ensure a beneficiary timely completes Medicaid reassessment(s) as part of the annual recertification requirements. This includes, but is not limited to, the following activities:

- (a) Collecting and submitting documentation to DHCF, or its designee, such as medical assessments and clinician authorization forms;
- (b) Assisting the beneficiary to receive an annual, and as needed, level of care assessment from DHCF, or its designee, to verify the beneficiary's need for EPD Waiver services;
- (c) Ensuring information is uploaded to DHCF's electronic case management system at least sixty (60) days prior to the expiration of the beneficiary's current certification period;
- (d) Collecting financial eligibility (*i.e.*, income) information from the beneficiary and/or the authorized representative and transmitting to DHCF, or its designee;
- (e) Reevaluating the beneficiary's goals, level of service and support needs, and updating and/or revising the PCSP to reflect any;
- (f) Assessing progress in meeting established goals, as documented in the PCSP and ensuring that the information is forwarded to DHCF;
- (g) Coordinating any change requests, including adding new services; and
- (h) After the approval of services by DHCF, or its designee, following-up with selected service providers within five (5) working days of authorization to ensure services are in place.

Comments on the emergency and proposed rule shall be submitted, in writing, to Claudia Schlosberg, Senior Deputy Director/State Medicaid Director, Department of Health Care

Finance, 441 4<sup>th</sup> Street, N.W., 9<sup>th</sup> Floor, Suite 900 South, Washington D.C. 20001, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), or via telephone on (202) 442-8742 within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Copies of the emergency and proposed rule may be obtained from the above address.